

**STATE OF WEST VIRGINIA
WEST VIRGINIA SECURITIES COMMISSION
BEFORE THE SECURITIES COMMISSIONER
CHARLESTON, WEST VIRGINIA 25305**

**ORDER NO. 0002 VACATING ORDER NO. 99-1236,
ESTABLISHING AN INVESTMENT ADVISER SOLICITOR
AND INVESTMENT ADVISER SOLICITOR
REPRESENTATIVE, AND ESTABLISHING THE
REQUIREMENTS THEREFOR.**

Pursuant to the authority granted to him by Chapter 32, of the West Virginia Code, 1931, as amended ("The West Virginia Uniform Securities Act"), herein after referred to as "the Act", and particularly Chapter 32, Article 4, Section 412 of the Act, the Commissioner of Securities ("Commissioner") has reviewed the adoption of Order No. 99-1236.

Pursuant to said review, the Commissioner is of the opinion and finds as follows:

FINDINGS OF FACT

1. Order No.99-1236 established restrictions for certain investment advisers and limited capacity investment adviser representative registrations and adopted standards for granting waivers of examinations.
2. Based on further analysis the restrictions and requirements set forth in Order No. 99-1236 are in need of revision.
3. This Order is necessary and appropriate in the public interest.

CONCLUSIONS OF LAW

1. Chapter 32, Article 4, Section 412(a) of the Act provides that the Commissioner may from time to time make orders as necessary to carry out the provisions of the Act.

2. Chapter 32, Article 4, Section 412(a) of the Act further provides that the Commissioner may classify securities, persons and matters within his jurisdiction, and prescribe different requirements for different classes.
3. This Order is consistent with the purposes fairly intended by the policies and provisions of the Act as required in Chapter 32, Article 4, Section 412(b) of the Act.
4. Title 111 of the Legislative Rules of the Commissioner of Securities, specifically '111-1-13, allows the Commissioner flexibility to adopt standards and to conditionally restrict registration requirements.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The classification of Investment Adviser Solicitor is hereby established.
 - A. A person or entity may seek to register as an Investment Adviser Solicitor provided that their sole business activity as an investment advisory firm is to solicit, offer, or negotiate for the sale of investment advisory services on behalf of another person or entity. An Investment Adviser Solicitor shall not perform any of the other functions of an Investment Adviser as defined in Chapter 32, Article 4, Section 401(g).
 - B. An Investment Adviser Solicitor shall not be subject to the net worth requirements of an Investment Adviser set forth in Legislative Rule '111-1-13.02.
 - C. An Investment Adviser Solicitor shall not be required to file Part 2 of form ADV.
 - D. Any person or entity that is currently registered as a Limited Capacity Investment Adviser shall be reclassified as an Investment Adviser Solicitor upon adoption of this Order.
 - E. Business referral arrangements including fee or commission agreements between the Investment Adviser Solicitor and the person or entity on whose behalf the Investment Adviser Solicitor is referring clients shall be

provided to the Commissioner within five (5) days of adoption. The disclosure of referral arrangements shall include (1) any policies and procedures for supervision of the Investment Adviser Solicitor by the person or entity with whom the arrangement is formed; (2) any supervisory policies and procedures of the Investment Adviser Solicitor of its Investment Adviser Solicitor Representatives; (3) any bonding and liability obligation of the person or entity with whom the arrangement is formed for the business conduct of the Investment Adviser Solicitor; (4) any bonding or liability of the Investment Adviser Solicitor for the business conduct of its Investment Adviser Solicitor Representatives; (5) disclosure of any fees or commissions receivable by the Investment Adviser Solicitor and/or its Investment Adviser Solicitor Representatives. Disclosure of referral arrangements including fee or commission agreements shall be disclosed to the customer upon solicitation of the referral. The Investment Adviser Solicitor shall provide a client with a certification of delivery form for the client to sign acknowledging that the client has received a copy of the referral agreement. A copy of the signed certification shall be retained by the Investment Adviser Solicitor.

- F. The Investment Adviser Solicitor shall file with the Commissioner, any change in the business referral arrangement within thirty (30) days of adoption of a change. The restricted registration of an Investment Adviser Solicitor may be suspended or revoked per Chapter 32, Article 2, Section 204, due to substantive changes in the business referral agreement.
- G. An Investment Adviser Solicitor is subject to all other requirements of an Investment Adviser as established by statute, regulation, order or policy statement unless stated otherwise in this Order.

2. The classification of Investment Adviser Solicitor Representative is hereby established.

- A. An Investment Adviser Solicitor Representative is a principal, partner, or employee of an Investment Adviser Solicitor who solicits, offers or negotiates for the sale of investment advisory services as authorized by the

Investment Adviser Solicitor. The Investment Adviser Solicitor Representative shall only function within the limited capacity to solicit, offer or negotiate for the sale of investment advisory services and possesses no other capability of Investment Advisor Representative as defined in Chapter 32, Article 4, Section 401(h).

- B. An Investment Adviser Solicitor Representative must be registered or qualified to engage in the securities business in the State of his or her principal place of business.
- C. The Commissioner may grant a waiver from testing requirements for an Investment Adviser Solicitor Representative for whom registration is sought, provided the applicant appears to be otherwise qualified to transact business in this State, and that the interests of investor protection do not require the examination imposed by Legislative Rule '111-1-13.01(2).
- D. The Commissioner may consider the grant of a waiver from examination only upon written request. The written request must provide full and complete disclosure and be attested to by the individual for whom the waiver is requested. Copies of a schedule D and/or schedule F of Form ADV or other applicable document must accompany the written request.
- E. A request for waiver shall explicitly detail and provide documentation for each of the following: (A) education; (B) employment history; (C) nature of Investment Advisory business activity; and (D) former and current professional licensing, if any, held by applicant.
- F. An examination waiver request shall only be considered after all applicable forms and fees have been filed with the Commissioner.
- G. All granted examination waivers shall expire on December 31st of each year at the same time the Investment Adviser Solicitor's registration also expires. The annual renewal application of the Investment Adviser Solicitor shall include a new and current examination

waiver for each of its Investment Adviser Solicitor
Representatives.

3. This Order shall remain in effect until modified or vacated by
the Commissioner.

Entered this 12th day of May, 2011

Glen B. Gainer, III
State Auditor
Commissioner of Securities

by: Lisa A. Hopkins
General Counsel
Senior Deputy Commissioner of Securities